

BEFORE THE  
CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. AC-2008-21

RICHARD JAY BIRNBAUM  
19510 Ventura Blvd., Suite 210  
Tarzana, CA 91355

Certified Public Accountant Certificate  
No. 38463

Respondent.

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the California Board of Accountancy, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on February 23, 2009.

It is so ORDERED January 23, 2009.



FOR THE CALIFORNIA BOARD OF ACCOUNTANCY  
DEPARTMENT OF CONSUMER AFFAIRS

EDMUND G. BROWN JR., Attorney General  
of the State of California  
GLORIA A. BARRIOS  
Supervising Deputy Attorney General  
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Attorneys for Complainant

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DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

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Respondent.

Case No. AC-2008-21

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

In the interest of a prompt and speedy settlement of this matter, consistent with the public interest and the responsibility of the California Board of Accountancy of the Department of Consumer Affairs, the parties hereby agree to the following Stipulated Settlement and Disciplinary Order which will be submitted to the Board for approval and adoption as the final disposition of the Accusation.

**PARTIES**

1. Patti Bowers (Complainant) is the Executive Officer of the California Board of Accountancy (Board) and succeeds Dan Rich as the complainant in this matter. This action was brought solely in Ms. Bowers' and Mr. Rich's official capacities and they are represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California, by Scott J. Harris, Deputy Attorney General.

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1                   2.     Respondent Richard Jay Birnbaum is represented in this proceeding by  
2 attorney Robert S. Schulman, whose address is 555 South Flower Street, Forty-First Floor, Los  
3 Angeles, California 90071.

4                   3.     On or about September 23, 1983, the Board issued Certified Public  
5 Accountant Certificate No. 38463 to Respondent. The Certified Public Accountant Certificate  
6 was in full force and effect at all times relevant to the charges brought in Accusation No.  
7 AC-2008-21 and will expire on September 30, 2010, unless renewed.

8                                   JURISDICTION

9                   4.     Accusation No. AC-2008-21 was filed before the Board, and is currently  
10 pending against Respondent. The Accusation and all other statutorily required documents were  
11 properly served on Respondent on August 8, 2008. Respondent timely filed his Notice of  
12 Defense contesting the Accusation. A copy of Accusation No. AC-2008-21 is attached as  
13 Exhibit A and incorporated herein by reference.

14                                   ADVISEMENT AND WAIVERS

15                   5.     Respondent has carefully read, fully discussed with counsel, and  
16 understands the charges and allegations in Accusation No. AC-2008-21. Respondent has also  
17 carefully read, fully discussed with counsel, and understands the effects of this Stipulated  
18 Settlement and Disciplinary Order.

19                   6.     Respondent is fully aware of his legal rights in this matter, including the  
20 right to a hearing on the charges and allegations in the Accusation; the right to be represented by  
21 counsel at his own expense; the right to confront and cross-examine the witnesses against him;  
22 the right to present evidence and to testify on his own behalf; the right to the issuance of  
23 subpoenas to compel the attendance of witnesses and the production of documents; the right to  
24 reconsideration and court review of an adverse decision; and all other rights accorded by the  
25 California Administrative Procedure Act and other applicable laws.

26                   7.     Respondent voluntarily, knowingly, and intelligently waives and gives up  
27 each and every right set forth above, solely in the interest of entering into the prompt and speedy  
28 settlement of this matter.

1 CULPABILITY

2 8. Respondent does not admit the charges and allegations in Accusation  
3 No. AC-2008-21, but understands and agrees, that if proven at a hearing, the charges and  
4 allegations in Accusation No. AC-2008-21 would constitute cause for imposing discipline upon  
5 his Certified Public Accountant Certificate.

6 9. For the purpose of resolving the Accusation without the expense and  
7 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could  
8 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up  
9 his right to contest those charges.

10 10. Respondent agrees that his Certified Public Accountant Certificate is  
11 subject to discipline and he agrees to be bound by the Board's imposition of discipline as set forth  
12 in the Disciplinary Order below.

13 CONTINGENCY

14 11. This stipulation shall be subject to approval by the California Board of  
15 Accountancy. Respondent understands and agrees that counsel for Complainant and the staff of  
16 the California Board of Accountancy may communicate directly with the Board regarding this  
17 stipulation and settlement, without notice to or participation by Respondent or his counsel. By  
18 signing the stipulation, Respondent understands and agrees that he may not withdraw from this  
19 agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon  
20 it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement  
21 and Disciplinary Order shall be of no force or effect, and, except for this paragraph, it shall be  
22 inadmissible in any legal action between the parties, and the Board shall not be disqualified from  
23 further action by having considered this matter.

24 12. The parties understand and agree that facsimile copies of this Stipulated  
25 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same  
26 force and effect as the originals.

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1                   13.     In consideration of the foregoing admissions and stipulations, the parties  
2 agree that the Board may, without further notice or formal proceeding, issue and enter the  
3 following Disciplinary Order:

4                                   **DISCIPLINARY ORDER**

5                   IT IS HEREBY ORDERED that Certified Public Accountant Certificate No.  
6 38463 issued to Respondent Richard Jay Birnbaum is revoked. However, the revocation is  
7 stayed and Respondent is placed on probation for three (3) years on the following terms and  
8 conditions.

9                   1.       **Obey All Laws.** Respondent shall obey all federal, California, other  
10 states' and local laws, including those rules relating to the practice of public accountancy in  
11 California.

12                  2.       **Submit Written Reports.** Respondent shall submit, within ten (10) days  
13 of completion of the quarter, written reports to the Board on a form obtained from the Board.  
14 The Respondent shall submit, under penalty of perjury, such other written reports, declarations,  
15 and verification of actions as are required. These declarations shall contain statements relative to  
16 Respondent's compliance with all the terms and conditions of probation. Respondent shall  
17 immediately execute all release of information forms as may be required by the Board or its  
18 representatives.

19                  3.       **Personal Appearances.** Respondent shall, during the period of probation,  
20 appear in person at interviews/meetings as directed by the Board or its designated  
21 representatives, provided such notification is accomplished in a timely manner.

22                  4.       **Comply With Probation.** Respondent shall fully comply with the terms  
23 and conditions of the probation imposed by the Board and shall cooperate fully with  
24 representatives of the Board of Accountancy in its monitoring and investigation of the  
25 Respondent's compliance with probation terms and conditions.

26                  5.       **Practice Investigation.** Respondent shall be subject to, and shall permit,  
27 practice investigation of the Respondent's professional practice. Such a practice investigation

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1 shall be conducted by representatives of the Board, provided notification of such review is  
2 accomplished in a timely manner.

3           6.       **Comply With Citations.** Respondent shall comply with all final orders  
4 resulting from citations issued by the Board of Accountancy.

5           7.       **Tolling of Probation For Out-of-State Residence/Practice.** In the event  
6 Respondent should leave California to reside or practice outside this state, Respondent must  
7 notify the Board in writing of the dates of departure and return. Periods of non-California  
8 residency or practice outside the state shall not apply to reduction of the probationary period, or  
9 of any suspension. No obligation imposed herein, including requirements to file written reports,  
10 reimburse the Board costs, or make restitution to consumers, shall be suspended or otherwise  
11 affected by such periods of out-of-state residency or practice except at the written direction of the  
12 Board.

13           8.       **Violation of Probation.** If Respondent violates probation in any respect,  
14 the Board, after giving Respondent notice and an opportunity to be heard, may revoke probation  
15 and carry out the disciplinary order that was stayed. If an accusation or a petition to revoke  
16 probation is filed against Respondent during probation, the Board shall have continuing  
17 jurisdiction until the matter is final, and the period of probation shall be extended until the matter  
18 is final.

19           9.       **Retention of Client Documentation.** During the course of probation,  
20 Respondent shall retain all client documentation for deductible items reported on client  
21 Schedules A and Forms 2106, including phone messages and memos to Respondent's files that  
22 support verbal client information, which shall be open to inspection by the Board or its designee.

23           10.       **Retention of Documentation of Contacts with Tax Agencies.** During  
24 the course of probation, Respondent shall retain all documentation of contacts with the IRS, the  
25 California Franchise Tax Board, and/or, other similar out-of state tax agencies, including  
26 telephone messages and memos to Respondent's files that support verbal contacts with the  
27 named agencies, regarding client tax return issues for which Respondent renders services, which  
28 shall be open to inspection by the Board or its designee.

1                   11.     **Ethics Course/Examination.** Respondent shall take and pass with a score  
2 of 90 percent or better a Board approved ethics examination within six (6) months of effective  
3 date of the Board's decision.

4                   If Respondent fails to pass said examination within the time period provided or  
5 within two attempts, Respondent shall so notify the Board and shall cease practice until  
6 Respondent takes and successfully passes said exam, has submitted proof of same to the Board,  
7 and has been notified by the Board that he may resume practice. Failure to pass the required  
8 examination no later than 100 days prior to the termination of probation shall constitute a  
9 violation of probation.

10                  Notwithstanding any other provision of this probation, failure to take and pass this  
11 examination within five years of the effective date of this order constitutes a separate cause for  
12 discipline of Respondent's license.

13                   12.     **Active License Status.** Respondent shall at all times maintain an active  
14 license status with the Board, including during any period of suspension. If the license is expired  
15 at the time the Board's decision becomes effective, the license must be renewed within 30 days of  
16 the effective date of the decision.

17                   13.     **Community Service.** During the course of probation, Respondent shall  
18 perform four hundred (400) hours of community service approved by the Board or its designee,  
19 which shall be completed three (3) months prior to the end of Respondent's probationary period.  
20 Respondent shall submit proof of compliance with this requirement to the Board at its request  
21 during the course of probation. Such community service may include service to a 501(c)(3)  
22 youth related organization, or similar non-profit entity, different in kind from that previously  
23 served by Respondent.


24                   14.     **Cost Reimbursement.** Respondent shall reimburse the Board \$16,979.00  
25 for its investigation and prosecution costs. The payment shall be made within thirty (30) days of  
26 the date the Board's decision is final.

27                   15.     **Completion of Probation.** Upon successful completion of probation,  
28 Respondent's license will be fully restored.

1 ACCEPTANCE

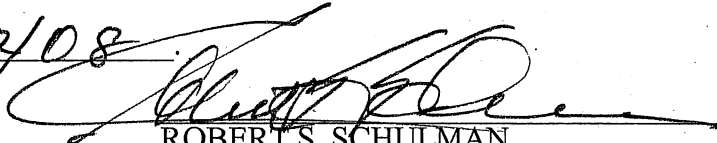
2 I have carefully read the above Stipulated Settlement and Disciplinary Order and  
3 have fully discussed it with my attorney, Robert S. Schulman. I understand the stipulation and  
4 the effect it will have on my Certified Public Accountant Certificate. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the California Board of Accountancy.

7 DATED: 12-12-08

8   
9 RICHARD JAY BIRNBAUM  
Respondent

10  
11 I have read and fully discussed with Respondent Richard Jay Birnbaum the terms  
12 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
13 Order. I approve its form and content.

14 DATED: 12/12/08

15   
16 ROBERT S. SCHULMAN  
Attorney for Respondent

17  
18 ENDORSEMENT

19 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
20 submitted for consideration by the California Board of Accountancy of the Department of  
21 Consumer Affairs.

22 DATED: 12/17/08

23 EDMUND G. BROWN JR., Attorney General  
24 of the State of California

25 GLORIA A. BARRIOS  
Supervising Deputy Attorney General

26   
27 SCOTT J. HARRIS

28 Deputy Attorney General  
Attorneys for Complainant



DOJ Matter ID: LA2008600552  
60364127.wpd

**Exhibit A**  
**Accusation No. AC-2008-21**

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

2 GLORIA A. BARRIOS

Supervising Deputy Attorney General

3 SCOTT J. HARRIS, State Bar No. 238437

Deputy Attorney General

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5 Telephone: (213) 897-2554

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6 Attorneys for Complainant

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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2008-21

13 RICHARD JAY BIRNBAUM

19510 Ventura #201

Tarzana, California 91355

**A C C U S A T I O N**

14 Certified Public Accountant Certificate

Number 38463

15  
16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Dan Rich (Complainant) brings this Accusation solely in his official  
20 capacity as the Acting Executive Officer of the California Board of Accountancy (Board),  
21 Department of Consumer Affairs.

22 2. On or about September 23, 1983, the Board issued Certified Public  
23 Accountant Certificate Number 38463 to Richard Jay Birnbaum (Respondent). The Certified  
24 Public Accountant Certificate was in full force and effect at all times relevant to the charges  
25 brought herein and will expire on September 30, 2008, unless renewed.

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## JURISDICTION

3. This Accusation is brought before the California Board of Accountancy under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 5100 of the Code states:

"After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

....

"(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052.

....

"(g) Willful violation of this chapter or any rule or regulation promulgated by the board under the authority granted under this chapter.

....

"(j) Knowing preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information."

5. California Code of Regulations, title 16, section 58 (Rule 58) states:

"Licensees engaged in the practice of public accountancy shall comply with all applicable professional standards, including but not limited to generally accepted accounting principles and generally accepted auditing standards."

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6. Section 5107, subdivision (a), of the Code states:

"The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and Dishonest Acts)

7. Respondent is subject to discipline pursuant to Code section 5100, subdivision (c), in that Respondent committed gross negligence and dishonest acts in the preparation of federal income tax returns, in which Respondent reported false taxpayer information and deductions to the Internal Revenue Service (IRS), and provided other information to the IRS on behalf of two (2) taxpayers that he knew, or should have known, was false, in violation of the applicable standards of conduct outlined in Treasury Department Circular 230, sections 10.51 (Incompetence and Disreputable Conduct) and 10.22 (Diligence as to Accuracy), and, the American Institute of Certified Public Accountants Code of Professional Conduct, ET Sections 51 (Preamble) and 54 (Integrity). The circumstances are as follows:

Client D. Richards (Complaint No. A-2007-313)

a. Respondent was engaged to prepare client D. Richards (Richards) 2004 federal income tax return. On Form Schedule A and Form 2106 of Richards' federal income tax return, Respondent included false deductions for which Richards had no documentation and had not claimed to have incurred. Specifically, Respondent included the following false deductions: real estate tax deductions in the amount of \$3,063; home mortgage interest reported on Form 1098 in the amount of \$10,889; employee business expenses in the amount of \$8,371, and charitable contributions in the amount of \$2,556. At no time did Richards provide Respondent with any numbers or documentation to support the deductions, aside from Richard's 2004 Form W-2.

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1           b.     On or about July 28, 2006, the IRS notified Richards that they were  
2 conducting an audit of Richard's 2004 federal income tax return, specifically questioning the  
3 deductions discussed in subparagraph (a), above. Respondent was initially engaged to represent  
4 Richards during the IRS audit, and requested the Richards provide information to support the  
5 deductions made in Richards' 2004 federal income tax return. Respondent was notified by  
6 Richards in mid-August 2006, as well as in November 2006, that there was no documentation to  
7 support the deductions. Richards also informed Respondent that during 2004, he did not own a  
8 home.

9           c.     On or about August 25, 2006, Respondent sent a letter to the IRS on  
10 behalf of Richards falsely stating that "the taxpayer was obtaining the information requested."  
11 On or about January 10, 2007, Respondent sent another letter to the IRS, falsely stating that  
12 Richards was obtaining copies of "canceled checks and miscellaneous documents to prove out  
13 the remaining items that have been disallowed." At the time these letters were submitted to the  
14 IRS, Respondent had been informed by Richards that he did not own a home in 2004, and that  
15 Richards had no supporting documentation for the falsely claimed and disallowed deductions.  
16 Respondent knew, or should have known, that there was no documentation to support the falsely  
17 claimed, and disallowed mortgage interest, real estate taxes, employee business expenses, and  
18 charitable contribution deductions.

19                 Client P. Morganelli (Complaint No. A-2008-96)

20           d.     Respondent was engaged to prepare client P. Morganelli's (Morganelli)  
21 2004 federal income tax return. On Form Schedule A and Form 2106 of Morganelli's federal  
22 income tax return, Respondent included false deductions for which Morganelli had no  
23 documentation and had not claimed to have incurred. Specifically, Respondent included the  
24 following false deductions: employee business expenses in the amount of \$5,344; gambling  
25 losses in the amount of \$5,110; and, charitable contributions in the amount of \$1,335.

26           e.     Morganelli did not incur and did not request Respondent to claim  
27 employee business expenses in 2004, and Morganelli did not request Respondent to declare, or  
28 have any documentation to support the amounts reported on Form Schedule A of Morganelli's

1 federal income tax return, specifically related to job seeking expenses, gambling losses, points, or  
2 for cash or non-cash charitable contributions.

3 f. On or about July 21, 2006, the IRS notified Morganelli that they were  
4 conducting an audit of his 2004 federal income tax return, specifically questioning the deductions  
5 discussed in subparagraphs (d) and (e), above.

6 g. On or about August 15, 2006, Respondent submitted a letter to the IRS on  
7 behalf of Morganelli, in which Respondent stated that business expenses for supplies and cell  
8 phone bills had been "fully verified," and that Morganelli had paid sales tax on a new vehicle.  
9 At the time the August 15, 2006 letter was submitted to the IRS, Respondent knew, or should  
10 have known, that this information was false, as Morganelli did not purchase a new vehicle in  
11 2004, and did not provide Respondent with any information or documentation to support the  
12 business expenses deductions.

### 13 SECOND CAUSE FOR DISCIPLINE

14 (Knowing Preparation, Publication or Dissemination of False or Misleading Information)

15 8. Respondent is subject to discipline pursuant to Code section 5100,  
16 subdivision (j), in that Respondent knowingly prepared, published or disseminated false,  
17 fraudulent, or materially misleading financial statements, reports, or information to the IRS.  
18 Specifically, Respondent claimed false deductions on clients Richard's and Morganelli's 2004  
19 federal income tax returns, and made false or misleading statements in letters submitted to the  
20 IRS on clients Richard's and Morganelli's behalf, as more fully discussed in paragraph 7, above.

### 21 THIRD CAUSE FOR DISCIPLINE

22 (Violation of Professional Standards - Rule 58)

23 9. Respondent is subject to discipline pursuant to Code section 5100,  
24 subdivision (g), in conjunction with Rule 58, in that Respondent violated professional standards,  
25 as more fully discussed in paragraph 7, above, which is herein incorporated by reference as set  
26 forth in whole.

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1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 38463, issued to Richard Jay Birnbaum;

2. Ordering Richard Jay Birnbaum to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;

DATED: July 22, 2008

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